IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.15714 OF 1996

1. Chinnayya Gounder
2. Peria Kutti gounder
3. Valliammal .. Petitioners

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Housing and Urban Development
Department, Madras 9.

2. The Chairman,
The Tamil Nadu State Housing Board,
Nandanam, Madras 35.

3. The Special Tahsildar (LA)
Housing Scheme No.II,
Collectorate, Coimbatore. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.S.S. Sundar for
Mr.T.R. Rajaraman

For Respondents 1&3: Mrs.N.G. Kalaiselvi
Special Govt. Pleader
Respondent -2 : Mr.D. Veerasekaran

:J U D G M E N T

The facts giving rise to the present writ petition are as follows :-
The petitioners are the owners of the properties in S.Nos.313/1, 313 /2, 313/3, 313/4, 314/1 & 314/2 measuring 10.24 acres in Kalapatti village. Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) dated 25.2.1994 was published in Gazette on 27.4.1994. Subsequently, declaration under Section 6 was made on 27.6.1995. The acquisition is challenged by raising several grounds, namely (1) declaration under Section 6 of the Act was made beyond the stipulated period

of one year (2) notice under Section 5-A has not been served in accordance with Section 45 of the Act (3) there is violation of Rule 3(b) of the Land Acquisition (Tamil Nadu) Rules and report of the requisitioning authority has not been furnished. Apart from these technical grounds, it is also contended that acquisition is contrary to the policy of the Government and even though many of the constructed flats promoted by the Tamil Nadu Housing Board had remained unsold, mechanically without the application of mind, acquisition has been made.

2. Point No.1: There is no dispute that 4(1) notification was published in the Gazette on 27.4.1994 and was published in two newspapers on 28.4.1994. Section 6 declaration was made on 27.6.1995. In the format signed by the Tahsildar and produced in Court at the time of eharing, it had been shown as if locality publication had been made on 1 0.06.1994 which was obviously more than one year prior to the date of declaration under Section 6 subsequently however in the counter, which has been filed after several adjournments and after the matter has been heard, the respondents have come out with an assertion that the substance of the notification has been published in the locality on 30.6.1994, and therefore, declaration under Section 6 made on 27.6.19 95 is within one year. The exact method of publication of the substance in the locality has not been indicated. It is not indicated as to whether it was published in the locality by beat of drums or by affixing in conspicuous places. The records, which have been produced belatedly, only show that the Format indicates that locality publication was made on 30.6.1994. The rule contemplates that publication of notification is to be made in convenient places and by affixture at the office of the Collector. But the records do not show the publication of 4(1) notification in the Notice Board of the Collector. Rule 2 of the Rules provides that the notice should be published in convenient places. There is no clear material on record to show that there has been such publication in convenient places. When the Gazette was published on 27.4.1994 and the newspaper publication was made on 28 .4.1994, it defies logic and there is no reason as to whether the so called publication was made on 30.6.1994, after expiry of about two months. This unusual delay creates doubt as there was any locality publication on 30.6.1994 or such belated locality publication has been □invented□ so as to bring the declaration within the prescribed period of limitation. This suspicion is further compounded by the fact that in the counter affidavit, details regarding locality publication have not been indicated and the records do not clearly indicate about the method of locality publication.

3. In 1993 WLR 324 (A. VEMBULI NAICKER v. STATE OF TAMIL NADU REP. BY COMMISSIONER AND SECRETARY TO GOVERNMENT, HOUSING AND URBAN DEVELOPMENT
DEPARTMENT AND OTHERS) it has been held that substance of the notification in the locality has to be published by beat of drums and by affixture in convenient places.

4. Even though the right to property is no longer considered as a fundamental right under Article 300-A of the Constitution, a constitutional right has been recognised to the effect that the person should not be deprived of his property save under the authority of law. Obviously law in the matter

is Land Acquisition Act and the Rules made thereunder. When a person is being deprived of his right to property as recognised under Article 300-A, which is a constitutional right even though not a fundamental right, the procedure contemplated under the law should be strictly followed and it must be shown by the authority that the procedure contemplated under the Act or Rules has been complied with. In the absence of any clear material to the effect that locality publication was made in accordance with the Rules contemplated on 30.6.1994, Section 6 declaration made on 27.6.1994, which was beyond the period of one year from the date of publication in Gazette or newspapers, it has to be held as barred by the law of limitation as contemplated under Section 6 of the Act.

5. Point Nos.2 & 3:-
These two points being inter-related, are taken up together. It is the case of the petitioner that even though objections have been filed by the petitioner, but thereafter no further opportunity has been given nor a copy of the reply of the requisitioning authority has been supplied. Learned counsel appearing for the State has contended that since objection has not been filed within 30 days from the date of notice, there was no necessity to forward a copy of the reply of the requisitioning authority. In the counter affidavit it has been indicated that individual notices have been served on the petitioners, but it is not specifically mentioned as to when such individual notices have been served. From pages 41 to 43, 45 7 49 of the records it appear that notice to the petitioners was purportedly served by affixture in survey stone. In course of hearing, the learned counsel for the State has submitted that since the petitioners have refused to receive the notice, notice was served by affixture. Apart from the fact that no such stand has been taken in the counter affidavit, there is no available material on record that in fact the petitioner had refused to receive the notice. Even assuming that the notice was refused, it is not understood as to why there was no affixture of notice on the house of the petitioners.

6. Apart from the above aspects, it is the specific case of the petitioners that in the notification published in the newspapers the authority before whom the land owners are required to file their objections had not been indicated. Unless it is made known to the authority before whom the objections are to be filed or which authority is going to inquire, the concerned affected land owners may not be able to file their objections within the stipulated time before the appropriate authority. Since the publication of notification itself was defective, the respondents cannot insist that the objection filed beyond 3 0 days should be ignored. Almost under similar circumstances in Smt.Pown Ammal & Others Vs. State of Tamil Nadu rep. by its Commissioner and Secretary, Social Welfare Department, Madras and Another (1999(II) MLJ 283) the acquisition proceeding has been quashed as the publication did not reveal the authority before whom the objections are to be filed.

7. Admittedly the petitioner has filed objections, wherein they have contended that lay-out plans have already been sanctioned. Even though there may not be any legal bar to acquire the land after layout plans were sanctioned, it is for the competent authority to consider as to whether

it is appropriate to acquire such lands in respect of which lay out plans had been sanctioned.

8.For the aforesaid reasons, I am inclined to accept the contention of the petitioners that mandatory provisions have not been complied and the principles of natural justice had been violated. In view of the aforesaid reasonings, the land acquisition proceedings are to be quashed and it is unnecessary to deal with other contentions raised by the petitioners.

9. For the aforesaid reasons, the writ petition is allowed and the land acquisition proceedings are quashed. There will be no order as to costs.
The pro-forma signed by the Special Tahsildar (Land Acquisition) and filed in course of hearing shall be kept on record.

Index : Yes
Internet : Yes

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To

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